IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 147 of 2000
with
CRIMINAL MISC.APPLICATION No 7049 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ASHOKKUMAR PRABHUDASBHAI MODI
Versus
STATE OF GUJARAT

Appearance:
1. Special Criminal Application No. 147 of 2000 with
Criminal Misc. Application No. 7049 of 2001.
MR N.S. DAFTARI WITH MR RAJESH M AGRAWAL for Petitioners
MR KJ SHETHNA SPEICAL PUBLIC PROSECUTOR appointed
by Government of Gujarat for Respondent No. 1
MR NITIN M AMIN for original complainant

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 27 .11.2001

C. A. V. JUDGEMENT

1. In this petition filed under Article 226/227 of the Constitution and under Section 407 of the Code of Criminal Procedure ('the Code' for short), petitioners,

who are accused in Sessions Case No. 36 of 1999 for commission of the offence of murder of one Dr. Sonia Modi, punishable under Section 302 read with Section 120B and other sections of the Indian Penal Code and facing trial in the said case before the learned Additional City Sessions Judge (Court No.15), Ahmedabad City, Ahmedabad, apprehending that they would not get fair and impartial criminal trial at the hands of the concerned Additional City Sessions Judge, seek transfer of the said Sessions Case pending for hearing on the file of the learned Additional City Sessions Judge (Court No.15), Ahmedabad City, which is a part-heard case as oral evidence of eight witnesses has been completed, to any other Court within the District or outside the District within Gujarat.

2. The birth of this proceeding has a nexus with an incident of murder of Dr. Sonia Modi. In connection with the said offence, FIR came to be registered and during the course of investigation, incriminating evidences were found against the present petitioners and, therefore, they are booked for the commission of offence of murder of Dr. Sonia Modi, punishable under Section 302 read with section 120B and other sections of the IPC. Charge-sheet is filed against the present petitioners and on committal, they are put on trial in Sessions Case No. 36 of 1999. The said case is allotted to learned Additional City Sessions Judge (Court No.15).

3. It is seen from the record that one of the present petitioners - Ashokkumar Prabhudas Modi - filed Special Criminal Application No.100 of 2000 before this Court seeking relief of transfer of the said Sessions Case from the Court of the learned Additional City Sessions Judge (Court No.15), to any other Court, and by order dated February 9, 2001, the said petition was permitted to be withdrawn by this Court with a view to enable the petitioners to file transfer application before the City Sessions Court, Ahmedabad and accordingly the present petitioners had preferred Criminal Misc. Application No. 346 of 2000 before the City Sessions Court, Ahmedabad, seeking the relief of transfer of the said Sessions Case from the Court of Additional City Sessions Judge, Court No.15 to any other Court of the same Sessions Division, under Sections 408 and 409 of the Code. The learned City Sessions Judge, Ahmedabad City, vide order dated February 18, 2000 dismissed the said petition by observing that under the provisions of sections 408 and 409 of the Code, a Sessions Judge can transfer a criminal case wherein procedural irregularity against the well settled practice is alleged and is shown

as likely to result into prejudice to the accused but the provisions of the said sections do not empower a Sessions Judge to go into the merits of the allegations qua conduct of a judicial officer of concurrent jurisdiction and, therefore, the transfer application before the City Sessions Court was not maintainable and deserved to be dismissed and accordingly it was dismissed. It is this order of dismissal of the said petition which has given rise to the present petition before this Court.

4. By filing this petition, the petitioners who apprehend that fair and impartial criminal trial at the hands of the concerned Judge is at stake, seek transfer of the said Sessions case on the ground of principles of public policy that justice should not merely be done but should manifestly seen to be done. Moreover, to have a fair and impartial criminal trial is a fundamental right of the petitioners/accused implicit under Article 21 of the Constitution. The proof and the cogent material of the alleged denial of fair and impartial trial to the petitioners is elaborately highlighted in the petition which runs into 71 pages wherein the petitioners have tried to demonstrate that from the day one, that is, from framing of the charge, to the recording of evidence of eight witnesses how serious prejudice has been caused to the petitioners' rights at the hands of the concerned Judge in getting fair and impartial trial. The petitioners have enumerated various instances which are catalogued by giving number from A to Z then AA to EE, in the memo of the petition, and tried to demonstrate the alleged denial of fair and impartial trial at the hands of the concerned Judge.

5. The grounds upon which the Sessions Case is sought to be transferred can briefly be stated as under:

(i) Petitioner No.4, a Hindi speaking non-Gujarati, who does not know vernacular language, which is the language for conducting trial, and is unrepresented by a lawyer, made several requests to the concerned Judge to supply the copy of the charge-sheet translated into Hindi Language or to provide an interpreter as provided in Section 279 of the Code but neither copy of the charge-sheet is supplied in Hindi Language nor an interpreter is provided to him by the concerned Judge and this has caused serious prejudice in conducting fair and impartial trial at the hands of the concerned Judge. Therefore there is an apprehension much less reasonable apprehension in the mind of petitioner No.4 that fair and

impartial trial is at stake at the hands of the concerned Judge. On this main premise, it is prayed that the Sessions case may be transferred to any other Court.

(ii) Petitioner No.4 was given the assistance of an advocate Mr. Habib Shaikh by way of legal aid who was asked to cross-examine on the same day on behalf of accused No.4 without giving relevant papers, including copy of the charges, charge-sheet and statements of the witnesses.

(iii) The learned Additional Sessions Judge used to give hints and suggestions to the witnesses as to how they should depose during the recording of the evidence, which amounts to interference by the concerned Judge during the recording of the evidence and, therefore, fair and impartial trial is denied by the concerned Judge.

(iv) The concerned Judge used to give threats to witnesses while recording evidence if they tried to resile from their police statement and thereby compelled them to adhere to their police statement and depose accordingly.

(v) The learned advocate who represented accused No.1 is not residing in Ahmedabad and is having his office at Rajkot. He is not accommodated in fixing the date of hearing and is compelled to sit in the Court even though Public Prosecutor remained absent.

(vi) The concerned Judge tried to play the role of prosecutor as well. Therefore there is an apprehension that the concerned Judge is pro-prosecution.

(vii) Copies of relevant documents like opinion of the handwriting expert, lie detector test, etc., have not been supplied to the accused so far, though relied upon by the prosecution.

(viii) The attitude of the concerned Judge towards the advocate representing the accused is prejudicial to them. Therefore, the atmosphere in the Court is not congenial to conduct fair and impartial trial.

Therefore it is prayed to transfer the said Sessions Case to any other Court.

6. This Court, while issuing notice to the respondent, had called for the remarks of the concerned learned Additional City Sessions Judge confidentially and pursuant to the said order, the learned Additional City Sessions Judge, Court No.15, vide communication dated March 2, 2001 addressed to the Registrar of this Court, forwarded the remarks confidentially. On receipt of the said remarks, office has placed the same on the record of the case. The said remarks of the concerned Judge run into 15 pages which inter alia deny all the allegations made in the petition, more particularly with regard to the allegation of prejudice caused to the petitioners in dispensing fair and impartial criminal trial and it is stated that the petitioners have moved the application seeking transfer only with a view to delay the proceedings by raising same grievances which were raised in the memo of petition before the learned City Sessions Judge and submitted that the petitioners should not be allowed to undermine the Court proceedings by adopting dilatory tactics and scandalizing the Court which may ultimately shatter morales of the subordinate courts.

7. Mr. Daftari, learned advocate for the petitioners, during the course of his submissions, relied upon the averments made in the petition more particularly the instances highlighted in the petition from A to Z and AA to EE. He tried to show that there is overwhelming proof and cogent material about denial of fair and impartial trial by the learned Additional City Sessions Judge and according to him, this has caused serious prejudice to the fair and impartial criminal trial which is a fundamental right of the petitioners enshrined under Article 21 of the Constitution. He has mainly highlighted the grievance of petitioner No.4, who is a Hindi speaking non-Gujarati under-trial prisoner, who does not know vernacular language, who had made various and repeated efforts to get the translated copies of the charge-sheet and documents into Hindi language. In the alternative he had also requested the concerned learned Additional City Sessions Judge to supply an interpreter who could explain him the Court proceedings in Hindi language. Accused No.4 was denied of the aforesaid facility at the hands of the concerned learned Additional City Sessions Judge. The learned counsel does not rest here. According to him, accused No.4 was given the assistance of an advocate, one Mr. Habib Shaikh, by way of Legal Aid, but he was asked to cross-examine on the same day on behalf of accused No.4 without giving any relevant papers, including copies of the charges and charge-sheets and statements of the witnesses which shows

the attitude of the learned Additional City Sessions Judge towards accused No.4. Ultimately, Mr. Habib Shaikh, learned advocate retired and in his place even today no provision is made to provide an advocate to accused No.4 by way of Legal Aid, which is a statutory duty cast on the State under clause 7 of sub-para 4 of para 126 of Chapter V of the Gujarat Criminal Manual, and therefore, there is apprehension in the mind of petitioner No.4 that he will not get justice at the hands of the concerned learned Additional City Sessions Judge. What is emphasized by the learned counsel is that he who is representing accused No.1 is having his official residence and headquarter at Rajkot. He, therefore, requested to give a little accommodation here or there. That request has also been turned down by the learned Additional Sessions Judge. What is stressed by the learned counsel is that even during the course of recording of the evidence the evidence is not recorded as per the version of the witnesses but it is recorded as per the sweet will of the concerned Judge. What is pointed out by the learned counsel is that witnesses of Panchnama are warned to depose as per their statement and the contents of the Panchnama and thereby the concerned Judge used to prompt them or to give hints to them against their own will. The sum and substance of the submissions made by the learned counsel is that, the way in which the trial is being conducted by the concerned Judge, there is a reasonable apprehension in the mind of the petitioners/ accused that they may not get justice at the hands of the learned Additional City Sessions Judge as they have been denied fair and impartial criminal trial. He, therefore, contended that the prayers made in the petition are justified and urged to transfer the said Sessions Case to any other Sessions court of the same Division or any other Division in Gujarat.

8. Mr. Daftari has relied upon various judgments of the Supreme Court as well as this Court to canvass the proposition that if fair and impartial criminal trial is denied and if it is brought to the notice of the appellate court during the hearing of appeal against the order of conviction and sentence, the appellate court can exercise powers and can remand the matter to the trial court for de-novo trial. The said citations are as under:

i) G.X. Francis and others v. Banke Bihari Singh and another, AIR 1958 SC 309.
ii) Bashira v. State of U.P. AIR 1968 SC 1313.
iii) Abdul Nazar Madani v. State of Tamil Nadu, AIR 2000 SC 2293.

iv) Labhu Laxmanbhai v. State of Gujarat, 1999 (1) GLR 889.

v) Shakraji Chaturji Raval v. State of Gujarat, XIII GLR 317.

vi) Unreported judgment in the case of Khant Vaghji Zina v. State of Gujarat, in Criminal Appeal No. 417 of 1972 decided on July 4, 1972.

vii) Vedva Vaghari v. State of Gujarat, 1994 (1) GLR 901.

9. Mr. Shethna, learned advocate who has been engaged as Special Public Prosecutor by the State of Gujarat and is assisted by Mr. Nitin Amin, learned advocate for the original complainant (though not a party in this proceeding), has contested the petition by making oral submissions. He contended that the petitioners are making much hue and cry by advancing the cause of accused No.4 contending that he does not know vernacular language. According to the learned counsel, in fact accused No.4 knows Gujarati language very well as not only he understands but speaks, reads and writes also. Therefore, the contention that inspite of asking for translated Hindi version of the charge-sheet or to provide an interpreter accused No.4 has not been provided with the copy of the charge-sheet translated into Hindi nor an interpreter and, therefore, fair and impartial trial is denied, is ill-founded. In fact, petitioner No.4 is not at all interested in getting the said Sessions Case transferred from Court No.15 to any other Court. He has been made an instrument at the hands of other petitioners for exposing the cause of transfer as the conduct of the petitioners from the very beginning is to create obstacle in the way of the concerned Judge as they are not interested in conducting the trial before the said Judge.

(i) What is emphasized by Mr. Shethna, the learned Special Public Prosecutor is that initially petitioner No.4 was given the assistance of advocate Mr. Habib Shaikh to conduct the trial on his behalf under Legal Aid Scheme but he did not cooperate with the said advocate, therefore, he was compelled to retire from and matter and thereafter petitioner No.4 made a declaration that he wants to defend his case himself during the trial. Therefore, the grievance of petitioner No.4 that he is unrepresented in the trial Court and he should be provided with copy of the charge-sheet translated into Hindi Language or in the alternative he should be provided with an interpreter, has no substance. Therefore, the attempt of the petitioners, other than petitioner No.4, is nothing but a joined effort by

highlighting the cause of petitioner No.4 though in fact petitioner No.4 has no grievance if the said case is not transferred from Court No.15.

(ii) To canvass the proposition that petitioner No.4 knows Gujarati language as well as he is not interested in this transfer petition, Mr. Shethna drew the attention of this Court to various instances which, according to him, fortify that petitioner No.4 knows Gujarati language and he is very much interested in conducting the trial before the same Judge.

(iii) So far as other grievances ventilated by the petitioners such as the concerned Judge giving hints to the witnesses to depose as per their police statement and panchnama, prejudice caused on account of not accommodating the advocate, have also no substance. What is high-lighted by the learned counsel is that it may be true that on some occasion the learned Judge might have become harsh in granting date or might have told the witnesses to depose fearlessly but that can never be a ground for transfer of a part-heard Sessions Case under the guise of denial of fair and impartial criminal trial at the hands of the concerned Judge. According to him, such minor instances can never be given countenance to transfer the Sessions Case and that too a part-heart Sessions Case where eight witnesses have already tendered their oral testimony. It is emphatically contended by the learned Special Public Prosecutor that the petition is made to frustrate justice. He further contended that neither the prosecution nor the learned Judge was unfair to the accused at any point of time and if this petition is allowed by transferring the part-heard Sessions Case, it would give a wrong signal to the lower judiciary. What is stressed by the learned Special Public Prosecutor is that right from the very beginning, there was a determined attempt on the part of the petitioners anyhow to see that the case before the concerned Judge does not reach to its logical conclusion and obstacles one after the other were created in the way of the trial Judge to protract the proceedings and delay the trial anyhow to see that the said case is transferred from that court to some other Court and such a practice should not be given countenance and is required to be deprecated, otherwise it would give a wrong signal to the lower judiciary. He emphatically submitted that cross-examination is permissible at any length but cross-examination scandalizing the witnesses is not permissible and the attempt on behalf of one of the petitioners by putting scandalizing question to the husband of the victim and thereby to invite the ruling of the learned Judge

rejecting the said question is also a deliberate attempt on the part of the petitioners to make out a ground to get the case transferred from that Court which should not be permitted by this Court.

(iv) Lastly Mr. Shethna tried to justify the fair trial by showing evidence and rojnama of the case as to how the learned Additional City Sessions Judge has given sufficient opportunity to the petitioners to cross-examine the witnesses. He, therefore, contended that there is no substance in the petition and the petition deserves to be dismissed and prayed that the petition may be dismissed.

10. In support of the aforesaid submissions, Mr. Shethna has placed reliance on the following judgments of the Supreme Court:

(i) R. Balakrishna Pillai v. State of Kerala, JT 2000 (9) SC 549.
(ii) Bhajan Lal, Chief Minister, Haryana v. M/s. Jindal Strips Ltd., (1994) 6 SCC 19.
(iii) Pramod Kumar v. State of UP II (2001) CCR 325 (SC).
(iv) State of UP v. Raghubir Singh 1997 SCC (Cri) 499.
(v) Lt. Col. S.J. Chaudhary v. State (Delhi Administration) AIR 1984 SC 618.
(vi) Suk Das v. Union Territory of Arunachal Pradesh (1986) 2 SCC 401.
(vii) State of Rajasthan v. Ani alias Hanif and others AIR 1997 SC 1023.
(viii) Maneka Sanjay Gandhi v. Rani Jethmalani, (1979) 2 SCR 378.

11. I have considered the submissions advanced by the learned advocates for the parties, perused the averments made in the petition as well as the record of the case, copies of which are perpared and supplied by the learned advocate for the petitioners and letter dated October 20, 2001 sent by petitioner No.4 from jail to the Hon'ble the Chief Justice of this Court, the letter dated February 4, 2000, Ex.118, addressed to the learned Additional City Sessions Judge (Court No.15), Ahmedabad City and the letter dated November 6, 2001 addressed to the Hon'ble the Chief Justice of this Court written by petitioner No.4. I have also considered the remarks offered by the concerned Judge and the judgments cited at the bar by the learned counsel for the parties.

12. The concept of dispensing of fair and impartial

criminal trial is as old as criminal justice administration system itself. It is one of the fundamental concept of the criminal justice administration system. The Criminal justice administration system cannot run without fair and impartial trial. The said right is also recognized under Articles 21 and 39A of the Constitution of India and the said principle cannot be achieved without providing legal aid to the accused who is unrepresented through a lawyer. Even if the accused refuses to take assistance of a lawyer or any legal aid, it is the duty of the Court to appoint an advocate as an amicus curiae to assist the Court in arriving at the correct conclusion and to find out guilt or innocence of the accused. The aforesaid concept is high-lighted in various judgments of the Supreme Court as well as this Court and the decisions on this aspect are legion but it is not necessary to recapitulate them here merely to cover the ideal parade of femiliar knowledge. However, one can profitably refer the important decisions on this aspect.

13. In G.X. Francis's case (supra), the Supreme Court has said that the public confidence in the fairness of trial held in such an atmosphere would be seriously undermined, particularly among reasonable Christians all over India, not because the Judge was unfair or biased but because the machinery of justice is not geared to work in the midst of such conditions. The calm detached atmosphere of a fair and impartial judicial trial would be wanting, and even if justice were done it would not be "seen to be done". In the said judgment, the Supreme Court felt that public confidence in the fairness of a trial held in such an atmosphere would be seriously undermined and under the circumstances of the case, the transfer petition could be allowed.

14. In Abdul Nazar Madani's case (supra), the Supreme Court has held that the purpose of the criminal trial is to dispense fair and impartial justice uninfluenced by extraneous considerations. When it is shown that public confidence in the fairness of a trial would be seriously undermined, any party can seek the transfer of a case within the State under section 407 and anywhere in the country under Section 406 of the Code. The apprehension of not getting a fair and impartial inquiry or trial is required to be reasonable and not imaginary based upon conjectures and surmises. If it appears that the dispensation of criminal justice is not possible impartially and objectively and without any bias, before any Court or even at any place, the appropriate Court may transfer the case to another Court where it feels that

holding of fair and proper trial is conducive. No universal or hard and fast rules can be prescribed for deciding a transfer petition which has always to be decided on the basis of the facts of each case.

15. In Labhu Laxmanbhai's case (supra), a Division Bench of this Court, in which I was one of the Members of the Bench, has observed in para 27 as under:

> "It must be, therefore, inevitably, remembered by one and all officers of the administration of justice, much less the Judge or the Magistrates, that the concept of equal justice system must be made meaningful and purposeful. The provision for legal aid under Art. 39-A and stated in Art. 21 of the Constitution of India also must be made effective and efficient, purposeful and meaningful for the Courts ought to adopt broad, liberal and dynamic approach with a view to see that the accused is given free and fair, just and reasonable trial. Let us never forget that we have a social, secular and democratic Republic State which has adopted doctrine of welfare State. Giving a go-bye to Welfare State under which millions and millions of our people suffered for several hundred years in the past before becoming independence. Let us, therefore, never forget that the right of free and competent legal aid, is, a 'sine-qua-non', for upkeepment and sustenance of the rule of law which is one of the important basic structures of the Constitution of India. The right to legal aid has become almost like a fundamental right by catena of judicial pronouncements by Constitutional Courts and the Hon'ble Supreme Court of India. It must be, seriously, noted that the legal aid is not a matter of charity or mercy. It is an important right backed by the Constitution and that is the reason why the Government of India in its national and legal aid policy programmes devised the Legal Services Authorities Act, 1987, and has amended from time to time and, thereby, translating the spirit of Art. 39-A. The end result came to

the constitutinalisation of legal aid."

After making the aforesaid observations, this Court remanded the Sessions Case for de-novo trial according to law in view of the fact that the accused was unrepresented.

16. Keeping in forefront the aforesaid pronouncements of the Supreme Court as well as this Court, now let us examine the case on hand to find out as to whether the apprehension of the petitioners that fair and impartial trial at the hands of the concerned Judge would be denied to them, is justified or not and petitioner No.4 is in fact denied the right to avail benefit of free legal aid by not appointing an advocate to represent his case.

17. At the outset, it may be noted that this petition is filed for transfer of a part-heard Sessions Case from the Court of Additional City Sessions Judge (Court No.15) to any other Court by highlighting the main grievance on behalf of petitioner No.4 who is a Hindi speaking non-Gujarati, who does not know vernacular language, which is the language for conducting trial, and is unrepresented by a lawyer, who made several requests to the concerned Judge to supply the copy of the charge-sheet translated into Hindi language or to provide an interpreter as provided in Section 279 of the Code but neither the copy of the charge-sheet is supplied in Hindi language nor an interpreter is provided to him by the concerned Judge and this has caused serious prejudice to the petitioners in conducting fair and impartial trial at the hands of the concerned Judge and, therefore, there is an apprehension much less reasonable apprehension in the mind of petitioners that fair and impartial trial at the hands of the concerned Judge is at stake and on this main premise the Sessions Case may be transferred to any other Court.

18. It may be appreciated that petitioner No.4 gave an application vide Ex.20 praying to supply the copy of the charge-sheet in Hindi language. On the said application, the learned Additional City Sessions Judge vide order dated November 29, 1999 observed that the case was adjourned time and again for enabling the accused to engage the advocate of his choice or to get the appointment of the advocate from the panal of legal aid committee but he has not engaged any. There is nothing on record to suggest that the accused does not know Gujarati language. On the contrary the application itself has been directed in Gujarati and during interaction with the learned P.P. Mr. Desai, the

accused did answer in Gujarati. On the inquiry made by the Court he has stated that he is staying in Gujarat since last more than fifteen years. Hence, it is not believable that the accused does not know Gujarati. Even otherwise, there is no provision in Cr.P.C. to provide copy of charge-sheet in Hindi Language. Hence this application is rejected. Similarly, petitioner No.4 gave one more application vide Ex.66, dated January 6, 2000 wherein it was stated that Mr. Habib Shaikh, the advocate appointed by way of legal aid has not discussed anything with him with regard to his defence. Therefore he did not want the services of that advocate who may be permitted to retire as he wanted to plead his case himself. He further prayed that he may be provided with an interpreter so that he can understand the proceeding of the Court which is conducted in Gujarati language. The learned Additional City Sessions Judge rejected the said application on the same day by observing that in the application he has shown distrust upon the said advocate and therefore Mr. Habib Shaikh has also requested the court to permit him to retire from the case. It clearly transpires that the accused No.4, though knows Gujarati, as observed in earlier order dated November 29, 1999 below Ex.20, keeps on giving applications to delay the proceedings. Even when the charge was framed and explained to him, he has not raised any such contention that he did not understand the Gujarati language. Under the circumstances, the request of the accused to interpret everything which is being recorded in the court in Hindi language through the Court is not accepted. Since the accused wants to defend by himself and does not want to engage any advocate, Mr. Habib Shaikh is permitted to retire from the case and this application stands disposed of accordingly.

19. In this connection, let us examine the sequence of events which is prepared and supplied by Mr. Shethna, learned Special Public Prosecutor, during the course of his submissions, from the date of filing of the charge-sheet till the date on which the transfer petition was preferred:

(i) On January 18, 1999, learned Metropolitan Magistrate, Ahmedabad, asked petitioner No.4 about the receipt of charge-sheet papers. In reply thereto petitioner No.4 replied in the affirmative. Answer given by petitioner No.4 is in Gujarati and he has signed in Gujarati language though it is disputed by the advocate for petitioner No.4 that the said paper is sighed in Hindi Language.

(ii) On April 12, 1999 Sessions Case No.36 of 1999 was put up for the first time before the learned Additional City Sessions Judge Mr. P.B. Raval. Again the matter was placed before the same Judge on April 23, 1999 and May 7, 1999.

(iii) On May 17, 1999, learned Additional City Sessions Judge Mr. P.B. Raval framed charge. Petitioner No.4 did not plead guilty and has given his answer in Gujarati to the effect that he wants to be tried.

(iv) On September 9, 1999 the Sessions Case was put up before the learned Additional City Sessions Judge Mr. Z.K. Saiyed. Petitioner No.4 submitted an application for engaging a lawyer which was granted.

(v) On September 27, 1999 Sessions Case was put up before the learned Additional City Sessions Judge Mr. Z.K. Saiyed. Advocate for petitioner No.6 was heard. Since the business was being changed from October 1, 1999 the proceeding was sent back to the Criminal Department.

(vi) On October 28, 1999 the Sessions Case was allotted to the learned Additional City Sessions Judge, Ms. Belaben Trivedi. Petitioner No.4 was instructed to engage a lawyer.

(vii) On November 1, 1999 petitioner No.4 was again instructed to engage a lawyer.

(viii) On November 4, 1999 petitioner No.4 gave an application to engage an advocate and the same was granted.

(ix) On November 24, 1999 petitioner No.4 was again instructed to engage an advocate.

(x) On November 29, 1999 petitioner No.4 for the first time gave an application to supply copies of the charge-sheet in Hindi on the ground that he does not know Gujarati. On January 18, 1999 i.e., 11 months before the said application, petitioner No.4 has stated in Gujarati before the learned Metropolitan Magistrate during the committal proceedings that he has received the copies of the charge-sheet papers. Not only that he has put his signature in Gujarati. Thus, all

the efforts were started on and from November 29, 1999.

20. Now, on having perusal of the certified copy of the statement of petitioner No.4 which was recorded on January 18, 1999 by the learned Metropolitan Magistrate, it is evident that he was asked as to whether he has received charge-sheet and he wants the assistance of an advocate by way of legal aid to which he has replied in Gujarati and has put his signature in Gujarati. Therefore there is every reason to believe that petitioner No.4 knows Gujarati vernacular, otherwise he would have raised objection from the very first day saying that he does not know Gujarati language and he must be supplied the copy of the charge-sheet in Hindi language and he would not have accepted the copy of the charge-sheet in Gujarati language. Learned advocate Mr. Daftari contended that on that very paper, that is, reply of petitioner No.4 recorded on January 18, 1999, he has put his signature in Hindi language. I am not prepared to accept the said contention because on having perusal of Ex.118, which is an application tendered by petitioner No.4 to the concerned Judge which is written in Hindi language, he has stated that he is not interested in getting the Sessions Case transferred to any other court and the said letter is signed by the petitioner in Hindi language. Comparing the signature of the petitioner in the copy of the evidence dated January 18, 1999 and Ex.118, there is no manner of doubt that petitioner No.4 has put his signature on his statement dated January 18, 1999 in Gujarati language whereas in the application Ex.118 he has put his signature in Hindi language. It is true that the mother tongue of petitioner No.4 is Hindi but he is residing in Gujarat for the last more than 15 years. Therefore he is acquainted with Gujarati language at the same time Hindi being his mother tongue he is conversant with that language also.

21. In view of the aforesaid state of affairs, the finding recorded by the learned Additional City Sessions Judge below application Ex.20 dated November 29, 1999 and below application Ex.66 dated January 6, 2000 that there is nothing on record to suggest that petitioner No.4 does not know Gujarati language, is just and proper. The learned Judge has observed that the application itself has been directed in Gujarati and during interaction with the learned P.P. Mr. Desai the accused did answer in Gujarati and on the inquiry made by the Court he has stated that he is staying in Gujarat since last more than fifteen years and therefore it is not believable that accused does not know Gujarati. Therefore, submission

that petitioner No.4 being a Hindi speaking person he does not know Gujarati has no substance and the learned Additional City Sessions Judge has very rightly rejected the application to supply copy of the charge-sheet translated in Hindi language to petitioner No.4 and similarly the learned Judge has rightly come to the conclusion that petitioner No.4 knows Gujarati. Therefore, there is no question of providing any interpreter to petitioner No.4 as envisaged under Section 279 of the Code and the said prayer is also very rightly rejected. Therefore there is no substratum in the contention that in view of non-supply of copy of the charge-sheet in Hindi language and not providing an interpreter to petitioner No.4, fair and impartial trial is denied.

22. The next contention advanced by the learned advocate for the petitioners is that petitioner No.4 was given the assistance of an advocate Mr. Habib Shaikh by way of legal aid who was asked to cross-examine on behalf of petitioner No.4 on the same day without giving relevant papers, including copy of the charges, charge-sheet and statement of the witnesses has also, in my view, no substance. Mr. Habib Shaikh has retired as petitioner No.4 gave an application Ex. 66 praying that he wished to defend the case on his own. Mr. Habib Shaikh has not raised any grievance against the concerned Judge that he was not given any opportunity to prepare the case to defend petitioner No.4 and he was asked to cross-examine on the same day. If Mr. Habib Shaikh, had any objection he would have definitely raised the objection before the concerned Judge but no such objection was raised by him in this regard. It is true that Mr. Habib Shaikh has retired as an advocate for petitioner No.4 as he wanted to defend his case himself.

23. Mr. Daftari, learned advocate for the petitioners contended that the advocate appointed to defend the accused at Government expenses must be given sufficient time to prepare for the defence and take necessary instructions. In support of the aforesaid contention, he placed reliance on the judgments of Division Bench of this Court (i) in Shakraji Chaturji Raval's case (supra) and an unreported judgment (ii) in Khant Vaghji Zina's case (supra) and the judgment of the Supreme Court (iii) in Bashira's case (supra). The sum and substance of the principle enunciated in the aforesaid three judgments is that sufficient time for preparation of defence in a case for the offence punishable under Section 302 of IPC should be given for effective cross-examination of the prosecution witnesses

when the advocate is appointed to defend the accused at Government expenses. The aforesaid three judgments relied upon by Mr. Daftari are of no avail or assistance to bring home the case for transfer of a part-heard Sessions Case. At the cost of repetition be it stated that in earlier paragraphs of this judgment I have observed that Mr. Habib Shaikh who was appointed by the concerned Judge to defend the case of petitioner No.4 has never raised any grievance before the concerned Judge that he was not given sufficient time. Petitioner No.4 gave an application Ex.66 wherein he has categorically requested that he wants to defend his case on his own and further it is also prayed in the said application that he may be provided with an interpreter as he wants to defend his case on his own. The learned Judge has passed an order dated January 6, 2000 on the said application and thereby Mr. Habib Shaikh was permitted to retire from the case. however, the prayer with regard to providing an interpreter was negatived in view of the fact that petitioner No.4 knows Gujarati, as observed in the earlier order recorded by the learned Judge.

24. It may be noted that though the petitioners have highlighted a ground for transfer of the Sessions Case advancing cause of petitioner No.4, in fact petitioner No.4 is not interested in getting this case transferred from Court No.15 to any other Court. In this regard it would be appropriate to refer to the letter dated October 20, 2001 sent by petitioner No.4 to the Hon'ble Chief Justice of this Court wherein in Hindi language he has stated that prior to 18 to 20 months at the instance of the lawyer he has signed the transfer petition. It is further stated in the said letter that he has filed several applications in this Court seeking deletion of his name from the transfer petition but he was not given any reply in that regard. Prior to sending of this communication to the Hon'ble the Chief Justice of this Court, petitioner No.4 had also submitted an application to the concerned Additional City Sessions Judge on February 4, 2001, vide Ex.118, wherein also, he has stated that through mistake he has signed the transfer application as he was not given any time to think over about the matter and he has apologized before the concerned Judge for the same. He has further stated that the Court has not acted in any prejudicial manner to him which requires the transfer of the Sessions case from the said Court to any other Court and he has declared that he has full confidence in Court No.15 and he wants that the trial is conducted before the said Court.

25. Mr. Daftari, learned advocate for the

petitioners, has relied upon a letter dated November 6, 2001 written by petitioner No.4 to the Hon'ble the Chief Justice of this Court wherein a request is made for early disposal of this Special Criminal Application and in the said application it is also requested to transfer the said Sessions Case from Court No.15 to any other Court. Mr. Daftari contended that previous letter dated February 4, 2000 was obtained by the learned Judge under coercion and duress and, therefore, it should not be relied upon. I do not agree with the said contention of Mr. Daftari in view of the fact that thereafter also on October 20, 2001 the petitioner sent a letter from jail to the Hon'ble the Chief Justice of this Court wherein he has reiterated that he is not interested in getting the said Sessions Case transferred from Court No.15 to any other Court and stated that at the instance of the lawyer he has signed the transfer application, otherwise he is not at all interested in the said Sessions case being transferred from that court to any other Court.

26. The next contention of Mr. Daftari is that the learned Judge used to give hints and suggestions to the witnesses as to how they should depose which, according to him, amounts to interference by the concerned Judge during the course of recording of the evidence. He further contended that the concerned Judge used to give threats to the witnesses while recording evidence if they tried or resile from their police statement and panchnama and thereby compelled them to adhere to their police statement and contents of panchnama and depose accordingly and the advocate who represented accused No.1 is not given accommodation. These mini-grievances can never be called a ground to transfer a part-heard Sessions Case from one Court to another. It is true that the learned Judge conducting trial must be fair not only to the prosecution but to the accused also. At the same time, it is the bounden duty of the trial Judge to explain to the witnesses that they should depose without fear or favour. Therefore, if on one occasion the learned Judge has given some suggestion to the witnesses that does not amount to interference while recording evidence. So far as giving accommodation to the learned advocate appearing for accused No.1 is concerned, there must be some difference of opinion in giving the suitable date or dates of the choice of the advocates but that also cannot be considered as a ground for transfer of a part-heard Sessions Case. It is settled principles of law that Sessions trial must be conducted day-to-day without any interruption. Therefore, not giving accommodation or adjustment to the learned advocates in giving dates cannot be considered as a ground for

transfer of a part-heard Sessions case.

27. In R. Balakrishna Pillai's case (supra), the Supreme Court has rejected the plea of transfer which was sought on the ground that one of the judges to whom appeal was assigned was advocate for commission of enquiry in mal-practices in Hydel Project.

28. In Bhajan Lal's case (supra), the Supreme Court has rejected the plea of transfer of the petition from one Bench to another Bench by observing as under:

> "Bias is the second limb of natural justice. Prima facie no one should be a judge in what is to be regarded as 'sua cause' ('nemo debet esse judex in propria causa), whether or not he is named as a party. The decision-maker should have no interest by way of gain or detriment in the outcome of a proceeding. Interest may take many forms. It may be direct, it may be indirect, it may arise from a personal relationship or from a relationship with the subject-matter, from a close relationship or from a tenuous one. In the case of non-pecuniary bias, as alleged in the instant case, regard is to be had to the extent and nature of interest. Then alone, the judge will be disqualified."

29. In Pramod Kumar's case (supra), the Supreme court has rejected the plea of transfer of the Sessions Case from one Court to another which was sought on the ground of non-adjournment of Sessions trial on repeated request by accused by observing that there is no ground for apprehension that accused would not get justice and the Supreme Court has ultimately set aside the impugned order of the High Court in transferring case.

30. In Lt. Col. S.J. Chaudhary's case (supra), the Supreme Court has said that the trial before the court of a Session must proceed and be dealt with continuously from its inception to its finish. It will be in the interest of both the prosecution and the defence that the trial proceeds from day-to-day. Sessions cases must not be tried piecemeal. Once the trial commences, he must except for a very pressing reason which makes an adjournment inevitable, proceed de die in diem until the trial is concluded. It is further observed in the said judgment that advocate accepting brief in criminal trial

must attend the trial from day to day. If he fails to attend, he will be committing breach of his professional duty.

31. In State of Rajasthan's case (supra), the Supreme Court has observed as under:

> "A judge is expected to actively participate in the trial, elicit necessary materials from witnesses at the appropriate context which he feels necessary for reaching the correct conclusion. There is nothing which inhibits his power to put questions to the witnesses, either during Chief examination or cross-examination or even during re-examination to elicit truth. The corollary of it is that if a judge felt that a witness has committed an error or a slip it is the duty of the judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross-examination. Criminal justice is not to be founded on erroneous answers spelled out by witnesses during evidence collecting process. It is a useful exercise for trial judge to remain active and alert so that errors can be minimised."

32. In Maneka Sanjay Gandhi's case (supra), the Supreme Court has observed as under:

> "Assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperilling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner's grounds on this touchstone

> bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the Court may weigh the circumstances."

33. The ratio laid down in the aforesaid judgments is squarely applicable to the present case. In the instant case the petitioners sought transfer of the part-heard Sessions Case on the ground that the concerned Judge is giving hints and also threats to the witnesses and not giving accommodation to the advocates appearing for the parties, cannot be considered as a ground for the transfer of a part-heard Sessions Case in view of the ratio laid down in the aforesaid judgments.

34. Seen in the above context, in the present day scenario, if these types of applications are entertained the entire judicial atmosphere would be polluted with such frivolous petitions for various reasons. As discussed above, even considering the grounds conjointly, it would be difficult to accept that there was any justification for such apprehension. Power of transfer of trial of a part-heard Sessions case cannot be exercised on hypersensitive grounds or mini-greivances.

35. In view of the aforesaid observation, there is no valid ground or justifiable reason to transfer the part-heard Sessions Case from Court No.15 to any other Court and I am of the opinion that the prayer for the transfer of a part-heard Sessions case by projecting the cause of petitioner No.4, who is a Hindi speaking non-Gujarati, having been found meritless, cannot be accepted and rest of the plea of transfer of the part-heard Session case also cannot be considered in view of the settled principles enunciated by the Supreme Court. The grievances raised by the petitioners are not at all grounds for transfer of a part-heard Sessions case. Therefore, the apprehension, much less the reasonable apprehension of denial of fair and impartial criminal trial has no substance and hence the petition is liable to be dismissed as having found meritless.

36. Before parting it is necessary to direct petitioner No.4 that he shall file a declaration on solemn affirmation before the concerned Additional City Sessions Judge on the day when the case resumes for recording of evidence to clarify as to whether he wants

(i) to engage an advocate at his own cost, (ii) the services of an advocate by way of legal aid at the Government expenses or (iii) to defend his case himself, so that in future he cannot make any grievance that he is not provided with any free legal aid. If petitioner No.4 makes an application for getting free legal aid, the concerned Judge shall appoint a fairly senior advocate to assist him by way of legal aid. The advocate so engaged or engaged by petitioner No.4 shall be given at least two weeks time to prepare the case so that in future petitioner No.4 cannot voice his grievance that the advocate was not given sufficient time to prepare the case. If petitioner No.4 himself, or his advocate, requests for permission to cross-examine any of the witnesses who have been already examined, the said request shall be considered by the concerned Judge by giving him an opportunity to cross-examine the witnesses who have been examined by recalling them.

37. For the foregoing reasons, the petition fails and is accordingly dismissed. Notice is discharged. Ad-interim relief granted at the time of issuance of notice and which is continued from time to time shall stand vacated. In view of the fact that three accused are under-trial prisoners, the concerned learned Additional City Sessions Judge is directed to expedite the trial and try to conclude the same preferably on or before April 30, 2002.

38. Cri.Misc. Application No. 7049 of 2001 which is filed by the applicants/ petitioners to permit them to carry out amendment in Special Criminal Application No. 147 of 2000 is dismissed as being irrelevant.

(A.M. Kapadia, J.)

39. Mr. Rajesh Agrawal, learned advocate for the petitioners, at this stage, urged to continue the ad-interim relief which was granted at the time of issuance of notice for a further period of six weeks to enable the petitioners to approach higher forum to challenge the order recorded by this Court. Mr. Shethna, learned Special Public Prosecutor has objected to the said request as the ad-interim relief was granted long back and thereafter this case which is a part-heard one has not been proceeded further. He, therefore, urged to reject the said prayer.

40. In view of the fact that at the time of issuance of notice this Court has stayed the criminal trial which has remained operative till today, it would be in the

fitness of things to continue the said ad-interim relief for a further period of four weeks from today so as to enable the petitioners to approach higher forum. Therefore, ad-interim relief granted earlier shall remain operative for a period of four weeks from today.

27.11.2001. (A.M. Kapadia, J.)

(karan)